





Community & Economic Development Division  
Planning and Development Services

7447 East Indian School Road, Suite 105  
Scottsdale, Arizona 85251

**To:** Board of Adjustment

**From:** Bryan Cluff, Principal Planner 

**CC:** Margaret Wilson, City Attorney Assistant II 

**Date:** March 24, 2021

**Re:** Agenda Item #5 - Review, discussion and possible action regarding Board of Adjustment Rules of Procedure.

Board of Adjustment Members,

Please find attached, a legislative draft of amendments to the Rules of Procedure for the Board of Adjustment for discussion at the April 7, 2021 meeting.

Thank you.



OFFICE OF THE  
CITY CLERK

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## **RULES OF PROCEDURE FOR THE BOARD OF ADJUSTMENT**

### **City of Scottsdale, Arizona**

Adopted July 7, 2005

Revised January 4, 2006

Revision Effective Date February 2, 2006

Revised May 4, 2011

Revision Effective Date June 1, 2011

Revised July 13, 2016

Revision Effective Date September 7, 2016

## **I. ORGANIZATION**

### **101. Officers**

The Board of Adjustment shall elect a Chair and Vice-Chair at its first meeting of the calendar year. The Zoning Administrator or designee shall be the Secretary of the Board. The Vice-Chair shall fill any unfilled term of the office of the Chair should that office become vacant for any reason. The Chair and Vice-Chair shall have all the rights, privileges and duties as all other members of the Board, including the ability to make motions and vote on all matters before the Board.

### **102. Duties**

- A. The Chair, or the Vice-Chair when the Chair is vacant, shall preside at meetings, shall decide all points of order or procedure, may administer oaths and take evidence, and shall as necessary compel the attendance of witnesses in accordance with the laws of the State of Arizona. The Vice-Chair shall be the Acting Chair and shall perform all duties of the Chair whenever the Chair is absent. In the event that neither the chair nor the vice-chair is in attendance, the former chair, if present and if still a member of the Board, or the most senior member of the Board shall service as the acting chair.
- B. The Secretary of the Board shall attend to official correspondence, and shall supervise the clerical work and technical preparation necessary to the disposition of appeals before the Board. The Zoning Administrator may appoint a designee or designees to fulfill all or part of his/her duties.

### **103. Legal Counsel**

The City Attorney, or the designated representative, shall be the legal counsel for the Board.

**104. Applicant attendance**

The applicant, or authorized representative, in any case being heard before the Board shall be present. However, this requirement shall not prevent the Board from hearing and acting upon the application where notice has been given to the applicant, or authorized representative, as required by statute or ordinance, if the applicant or his or her representative is not present.

**II. MEETINGS****201. Regular Meetings**

Regular meetings of the Board shall be held in the City Hall Kiva (Council Chambers) or other location as designated by the Chair at ~~5:00~~ 6:00 p.m. on the first Wednesday of each month or other date and time as determined by agreement of the members, provided proper notice of such meetings is provided by the Zoning Administrator as required under ARS 38-431 as amended. Regular meetings may be canceled if there are not matters to consider. An optional study session may be held beginning no more than 30 minutes prior to the regularly scheduled meeting. All meetings of the Board of Adjustment, except an executive session called and noticed pursuant to state statute, shall be open to the public. Interested parties are invited to observe study sessions; no formal voting will occur at a study session. Any action calling for a formal vote shall take place only at a public meeting.

**202. Special Meetings**

Special meetings for any purpose may be held by the Board on the call of its Chair or at the written request of three members, which call or request shall be filed in writing with the Zoning Administrator, or as may be scheduled by a majority of the members at any previous meeting. The manner of the call shall be noted in the minutes of the special meeting, and at least forty-eight (48) hours notice of the meeting shall be given to each member. Public notice shall be made by the Zoning Administrator as required under ARS 38-431 as amended.

**203. Quorum**

A quorum of the Board shall consist of at least four (4) members. The concurring vote of four (4) members shall be necessary to reverse any administrative decision made by the Zoning Administrator, to ~~pass~~ **authorize**, modify, amend, or to effect any variations from the zoning ordinance, or to take any action or make any decision delegated to the Board by the City Council.

**204. Agenda**

The Zoning Administrator shall prepare an agenda for each Board meeting, in conjunction with the chair. The agenda may list the matters of business in the following order:

**Call to Order**

**Roll Call** - Recording of members present and absent

**Administrative Items** - elections of chair and vice-chair, procedural changes, etc.

**Continuances/Withdrawals**

**Minutes** - submitted for approval, subject to changes as directed

**Regular agenda**

**Recess to executive session** on majority vote of the Board

**Miscellaneous • Other business not a part of a hearing  
Adjournment**

Case presentations may follow this order:

Staff presentation  
Applicant's presentation  
Other party(ies) in interest presentation  
Public testimony  
Rebuttal by applicant  
Close testimony  
Discussion  
Motion  
Vote by the Board

The Board has the right to establish time limits for all presentations.

**205. Robert's Rules of Order**

When any question of parliamentary procedure arises, it shall be decided on the basis of Robert's Rules of Order, unless otherwise specified in these rules of the Board.

**206. Continuances**

The Board will allow one continuance of a scheduled item at the request of the staff, applicant, or real-party-in-interest as a matter of course. Additional continuances will be granted only upon a show of good cause made to the Board.

**207. Member Attendance**

If the event any member of the Board is unwilling or unable to serve, or if any member is absent or tardy from three (3) consecutive hearings, or four (4) meetings within a six-month period, then the Chair shall notify the Mayor or the Mayor's designee, so that the consideration of removal and replacement of the member may be scheduled for City Council action.

**III. OFFICIAL RECORDS**

**301. Definitions**

- A. The official records shall include these rules and regulations, the written minutes of the Board (or if none exist, any video or audio tape made by the City of the meeting) together with all findings, applications, exhibits, decisions and or other official actions.
- B. In all places in these Rules of Procedure, the person referred to as the Zoning Administrator shall be the same person referred to as the Zoning Administrator in ARS 9-462.06.
- C. For all matters coming before the Board of Adjustment, the terms applicant(s), appellant(s), and party(ies) of Interest shall include the owner(s) of the property as well as those with the following relationships to the applicant(s), appellant(s), or party(ies) of Interest
  - 1. employees

2. legal counsel or other advisors
3. members of the corporate entity (if applicable)
4. family members
5. consultants (paid or unpaid)
6. co-signers of the applications/requests

**302. Recording of Vote**

Minutes shall include, but not be limited to:

1. The date, time and place of the meeting;
2. The members of the public body recorded as either present or absent or a conflict was declared;
3. A general description of the matters considered;
4. An accurate description of all legal actions proposed, discussed or taken, and the names of members who propose each motion, and
5. The names of persons, as given, making statements or presenting material to the Board and a reference to the legal action about which they made statements or presented material.
6. Any findings made by the Board.
7. Motion and Vote of the Board

**303. Public Record**

All of the official records of the Board shall be public records, and open to public inspection during normal working hours.

**IV. POWERS AND DUTIES**

**401. Jurisdiction**

The Board of Adjustment shall have the power and jurisdiction to hear and decide appeals from administrative decisions, applications for variances, and to hear and decide such other matters as the City Council shall, by ordinance, delegate to the Board.

The Board shall be presumed to have jurisdiction over any application before it unless challenged by any person, including a Board member, opponents of the applicant, or any member of the City staff. Such challenge must be based on applicable provisions of the State law, City ordinances or these Rules. The Board shall hear arguments and vote the question when a challenge is raised.

**402. Administration of Oaths**

The Chair of the Board shall have the power to administer oaths and to take evidence in accordance with ARS 9-462.06 (B). The oath to be so administered shall be substantially as follows:

I, \_\_\_\_\_ do solemnly swear or affirm to tell  
the truth, the whole truth, and nothing but the truth.

**403. Submission of Evidence and Written Material**

Documentary evidence or written material supporting the grant or denial of an adjustment, or relevant to any matter the Board is authorized to hear and decide, shall be submitted with fifteen (15) copies by noon at least fourteen (14) calendar

days prior to the public meeting (including holidays), or it will be rejected. Evidence and written material shall be submitted by interested parties to the Planning Department and not directly to Board members. An applicant shall supply an opposing party with a copy of the same material in the same time frame.

**Supplemental Material**

Any evidence or written material not submitted at least ~~seven (7)~~ ~~fourteen (14)~~ calendar days in advance of the public meeting may be ~~discussed as part of a presentation, addressed,~~ but no handouts to the Board will be accepted at the public meeting as part of the applicant's presentation or as public testimony, whichever is applicable. Strict adherence to judicial rules of evidence is not required.

Written Citizen comment shall be submitted at least ~~twenty four (24) hours~~ ~~seven (7)~~ ~~calendar days~~ prior to the public hearing.

**404. Conditional Variances**

Variances granted by the Board of Adjustment run with the land. The Board may prescribe in connection with any variance such conditions as the Board may deem necessary in order to fully carry out the provisions and intent of the basic zoning ordinance.

**405. Applicant Revisions to Variance Requests**

The applicant may revise the request for variance at any time prior to the Board's decision without invoking the requirements for resubmittal as outlined in Section 404. Revisions to the request that are made after the case has been publicly noticed will require the case to be re-noticed as required under ARS 38-431 as amended.

**406. Resubmittals**

No adjustment or appeal of a decision or interpretation of the Zoning Administrator that has been denied shall be further considered by the filing of a new application for one year unless the new application contains a material change in the nature of the case. If a material change is claimed by the applicant, the Board shall first hear the applicant on the issue of materiality of said change before allowing the Secretary of the Board to post the required notices for a hearing on the merits of the case. No application concerning matters under consideration of the Board shall be accepted.

**407. Reconsiderations**

The Board shall not hear or consider the reconsideration of any decision unless a motion for reconsideration is made prior to adjournment of the meeting when the decision was made. A motion for reconsideration can only be made by a Board Member on the winning side of the motion to be reconsidered.

**V. COMMUNICATIONS**

**501. Ex Parte Communications Prohibited**

The Board shall give to every person who has an interest in a proceeding, or that person's representative, the right to be heard according to law. No Board member shall initiate, permit, or consider ex parte communications, or consider other communications made to the Board member outside the hearing on the matter. For

purposes of this provision, ex parte communications prohibited under this rule shall include all communications related to a matter or proceeding before the Board that occur outside a meeting of a quorum of the Board except for the following:

- a) Communications with City staff as to administrative, factual and procedural matters excluding substantive matters regarding the merits of the case,
- b) Communications expressly authorized by law.

**502. Procedure Regarding Oral Communications**

Whenever any person initiates communications with a Board member regarding a filed application, the member shall refer that person to staff without discussing the matter. Whenever a person offers information directly to a Board member, the Board member shall report the information, identity of the source, and date of contact to the Board for inclusion in its formal record.

**503. Written Material Sent to a Board Member**

Pursuant to Rule 403, written material shall be submitted by interested parties to City staff and not directly to Board members. If written material regarding a filed application is transmitted to a Board member by the applicant or a member of the public it shall be forwarded to the staff for review and incorporation into the staff report.

**VI. RULES AND AMENDMENTS**

**601. Amendment Procedure**

Amendments to these rules may be made by the Board upon the affirmative vote of four members, provided any such amendment is proposed at a preceding meeting, or is submitted in writing at the prior regular meeting of the Board, and is included in the minutes of such meeting or meetings.

**602. Effective Date**

These rules, and any amendments thereto, shall be effective 30 days after their adoption by the Board by a vote of four or more members; provided applications which have been initiated prior to the effective date shall be treated according to rules of procedure existing prior to the effective date if the applicant so desires.

**603. Availability of Rules**

A certified copy of these rules and any amendments thereto shall be made available by placing them on record in the Office of the City Clerk within 10 days following the date of adoption.

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Date